International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on Saint Vincent and the Grenadines in the absence of a report*

1. In the absence of a report by the State party, the Committee considered the situation in Saint Vincent and the Grenadines with respect to the implementation of the Convention at its 383rd meeting (see CMW/C/SR.383), held on 12 April 2018. On the basis of information from, inter alia, other United Nations bodies and mechanisms, the Committee adopted at its 395th meeting, held on 20 April 2018, the following concluding observations.

A. Introduction

2. Saint Vincent and the Grenadines acceded to the Convention on 29 October 2010. The State party was under the obligation to submit its initial report under article 73 (1) of the Convention by 1 February 2012. At its twenty-fourth session, in April 2016, the Committee adopted a list of issues prior to the submission of the initial report (CMW/C/VCT/QPR/1), based on rule 31 bis of the Committee's provisional rules of procedure (see A/67/48, para. 26), which was transmitted to the State party on 9 May 2016. The Committee would like to recall that the State party had benefited from a capacity-building training workshop on reporting to assist in formulating the replies to the above list of issues, held from 19 to 21 July 2017 in Kingstown in cooperation with the Office of the United Nations High Commissioner for Human Rights.

3. The Committee regrets that, despite numerous formal and informal requests to do so, the State party did not submit a reply to the list of issues, which would have constituted its report under article 73 of the Convention. The Committee considers that the State party's failure to honour its reporting obligations under the Convention amounts to a breach of article 73. The Committee deeply regrets that, despite the assistance provided by the Office of the United Nations High Commissioner for Human Rights in the preparation of reports, the State party neither submitted a report nor sent a delegation, which prevented it from engaging in a constructive dialogue with the State party. The Committee wishes to impress upon the State party that non-compliance with its reporting obligations creates serious obstacles to the effective functioning of the mechanism set up to monitor the implementation of the Convention.

4. Following reminders transmitted by notes verbales dated 27 September 2016, 29 March 2017, 17 May 2017, 14 July 2017, 7 November 2017, 3 January 2018 and 15 February 2018, as well as informal reminders, the Committee proceeded to review the implementation of the Convention in the State party, in the absence of a report and without the presence of a delegation, on the basis of information that was available to it.

* Adopted by the Committee at its twenty-eighth session (9–20 April 2018).

5. The Committee recognizes that Saint Vincent and the Grenadines is a country of origin, destination and transit. The Committee notes that the migratory processes in the State party embody intraregional and interregional movements, mainly in the direction of North America. It also notes the existence of a migrant population, predominantly from the Caribbean.

6. The Committee notes that some of the countries in which Vincentian migrants are employed are not parties to the Convention, which may constitute an obstacle to the enjoyment by those migrant workers of their rights under the Convention.

B. Positive aspects

7. The Committee welcomes the efforts of the State party to combat poverty, economic instability and high unemployment rates, which are some of the primary causes of emigration, and to achieve sustainable economic growth, including through the implementation of the National Economic and Social Development Plan 2013–2025.

8. The Committee notes with appreciation the ratification of or accession to the following instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in October 2010;

(b) The United Nations Convention against Transnational Organized Crime and the Protocols thereto, in October 2010;

(c) The Convention on the Rights of the Child, in October 1993, its Optional Protocol on the sale of children, child prostitution and child pornography, in September 2005, and its Optional Protocol on the involvement of children in armed conflict, in March 2011.

9. The Committee welcomes the adoption of the following legislative, institutional and policy measures:

(a) The amended Representation of the People Act, in 2015;

(b) The amended National Insurance (Persons Abroad and Voluntary Contributors) Regulations, in 2013;

(c) The Prevention of Trafficking in Persons Act, in 2011, and the national plan of action against trafficking, in 2015.

C. Principal subjects of concern and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

10. The Committee regrets the lack of measures taken to ensure that the provisions set forth in the Convention are incorporated effectively into domestic legislation. In particular, it is concerned that several laws relevant for migration, including the Protection of Employment Act, 2003 and the Employment of Foreign Nationals and Commonwealth Citizens Act, 1973, are not in line with the Convention.

11. **The Committee recommends that the State party take the steps necessary to ensure that its national laws and policies are in line with the provisions of the Convention and other international human rights treaties, including by undertaking legislative reform to harmonize existing legislation with the Convention.**

Articles 76 and 77

12. **The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States**

parties and individuals concerning violations of the rights established under the Convention.

Ratification of relevant instruments

13. **The Committee recommends that the State party consider ratifying or acceding to the International Convention for the Protection of All Persons from Enforced Disappearance and the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Domestic Workers Convention, 2011 (No. 189).**

Comprehensive policy and strategy

14. The Committee is concerned about the lack of information on specific measures the State party has taken to implement the Convention. It regrets that the National Economic and Social Development Plan 2013–2025 applies only to nationals of the State party, and that migration-related issues are visibly absent from the Plan.

15. **The Committee recommends that the State party develop a comprehensive, gender-responsive and human rights-based migration policy and strategy in line with the Convention, and provide sufficient human, technical and financial resources for implementation and monitoring. It also recommends that the State party ensure that the human rights of migrant workers living in the State party are integrated into all relevant national plans and strategies, including with respect to the implementation of the National Economic and Social Development Plan 2013–2025.**

Coordination

16. The Committee is concerned about the absence of information on intergovernmental coordination among the institutions and services that deal with migration under the Convention. It regrets the absence of information on whether government agencies handling migration-related issues are allocated sufficient human and financial resources and receive related capacity-building training.

17. **The Committee recommends that the State party establish an appropriate body with a clear mandate and sufficient authority to ensure intergovernmental coordination of the effective implementation of the Convention and the realization of the rights protected therein at the State and local levels. It also recommends that the State party allocate to that body adequate human and financial resources, and provide capacity-building services for the ministries and agencies that handle migration issues.**

Data collection

18. The Committee is concerned about the lack of disaggregated statistical information that would enable it to fully assess the extent to which and the manner in which the rights set out in the Convention are implemented in the State party. In particular, the Committee regrets the lack of statistical and qualitative information on labour migration flows to and from the State party, including returns; on children left behind by migrant parents; and on migrant workers in an irregular situation in the State party and abroad. It also regrets the absence of information on measures taken by the State party to establish coordination mechanisms among the different entities, such as the various statistical offices of relevant ministries, that collect and analyse migration-related data.

19. **The Committee recommends that the State party establish a centralized and comprehensive database covering all aspects of the Convention, and collect data on the status of migrant workers in the State party, both documented and undocumented, migrant workers in transit and nationals working abroad. It also encourages the State party to compile information and statistics, disaggregated by sex, age, nationality, reason for entry or departure from the country and the type of work performed, in order to effectively inform relevant policies and the application of the Convention, in line with target 17.18 of the Sustainable Development Goals. In cases where it is not**

possible to obtain precise information, for example in the case of migrant workers in an irregular situation, the Committee requests that the State party provide data based on studies or estimates.

Independent monitoring

20. The Committee is concerned that the State party has not established an institution with broad competence in the field of human rights, including with respect to migration, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

21. **The Committee recommends that the State party establish a national human rights institution, in compliance with the Paris Principles, that, inter alia, effectively promotes and protects the rights of migrant workers and members of their families under the Convention, with a mandate to investigate all issues concerning the human rights of migrant workers and members of their families, regardless of status and to conduct unannounced visits to all places where migrant workers and members of their families may be deprived of their liberty, including detention centres and shelters.**

Training on and dissemination of the Convention

22. The Committee notes the training provided by the State party to law enforcement officials and non-governmental organizations on human rights, in particular with respect to trafficking, domestic violence and gender-based violence. The Committee is concerned, however, about the insufficiency of the training on the Convention and the lack of dissemination of the Convention and information on the rights enshrined therein among all relevant stakeholders, including national, regional and local government bodies, civil society organizations and migrant workers and members of their families.

23. **The Committee recommends that the State party:**

(a) **Develop education and training programmes on the rights of migrant workers and members of their families under the Convention, and ensure that such programmes are made available to all officials and persons working in the area of migration, in particular law enforcement and border authorities, judges, prosecutors and relevant consular officials, as well as national, regional and local officials, social workers, civil society organizations and journalists;**

(b) **Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the State party, in particular through pre-employment and pre-departure orientation programmes;**

(c) **Strengthen its work with civil society organizations and the media to disseminate information about, and promote, the Convention throughout the State party.**

Participation of civil society

24. The Committee notes that the State party has held consultations with civil society organizations on human rights issues, including on allegations of human rights violations and on national development planning. However, it is concerned about reports that the Government has also tried to limit the participation of such organizations in those consultations. Furthermore, the Committee regrets the absence of information on the role that civil society organizations have played in the implementation of the Convention.

25. **The Committee recommends that the State party proactively and systematically involve civil society and non-governmental organizations in the implementation of the Convention, including in the planning and implementation of migration policy, as well as in the preparation of its next periodic report.**

2. General principles (arts. 7 and 83)

Non-discrimination

26. The Committee is concerned that the general prohibition of discrimination under section 13 of the Constitution (1979) is not applicable to non-citizens. It is also concerned about the lack of provisions specifically prohibiting discrimination in employment and occupation, as well as the absence of information on the measures taken to guarantee the principle of non-discrimination in practice.

27. **The Committee recommends that the State party:**

(a) **Take all legislative and policy measures necessary to ensure that all documented and undocumented migrant workers and members of their families living within its territory or subject to its jurisdiction enjoy the rights protected under the Convention without any discrimination, in accordance with article 7 thereof;**

(b) **Amend national legislation, including relevant labour laws, to include a prohibition of direct and indirect discrimination on all the grounds enumerated in articles 1 and 7 of the Convention, with respect to all aspects of employment and occupation and covering all workers, including domestic workers and workers in the informal sector.**

Right to an effective remedy

28. The Committee regrets the absence of information on the use of administrative, judicial and other remedies by migrant workers and members of their families in the State party. The Committee is concerned that the State party has not taken measures to ensure that migrant workers and members of their families are aware of the existence of specific remedies available to them.

29. **The Committee recommends that the State party ensure that, in law and in practice, migrant workers and members of their families, including those in an irregular situation, have the same opportunities as nationals of the State party to file complaints and obtain effective redress in the courts in cases where their rights under the Convention are violated. It also recommends that the State party take measures to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in cases where their rights under the Convention have been violated.**

3. Human rights of all migrant workers and members of their families (arts. 8–35)

Labour exploitation and other forms of ill-treatment

30. The Committee notes with appreciation that sections 4 and 5 of the Constitution explicitly prohibit forced labour, slavery, torture and inhuman or degrading punishment or treatment. Nonetheless, the Committee is concerned about:

(a) The absence of information on the situation of foreign migrant workers, both in regular and irregular situations, in the State party;

(b) The existing legislation on child labour, which does not sufficiently protect children, in particular migrant children, from harmful work;

(c) The lack of information on measures taken to prevent and combat forced and child labour and commercial sexual exploitation involving migrant workers, in particular women and children, including in the context of sex tourism.

31. **The Committee recommends that the State party:**

(a) **Amend the national legislation framework on labour to bring it into compliance with the ILO Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105) and Worst Forms of Child Labour Convention, 1999 (No. 182);**

(b) **Take all measures necessary to protect all migrant workers, both documented and undocumented, in particular women and children, against all forms of labour exploitation and ill-treatment, especially child labour and commercial sexual exploitation, in line with targets 8.7 and 8.8 of the Sustainable Development Goals;**

(c) **Increase labour inspections, prosecute persons or groups exploiting migrant workers or subjecting them to forced labour and abuse, especially in the informal economy, and punish perpetrators with appropriate sanctions;**

(d) **Provide to victims and members of their families information pertinent to systems of assistance, protection and rehabilitation available in the State party;**

(e) **Include specific information in its next periodic report on the exploitation of migrant workers, including those in an irregular situation, as well as disaggregated data on incidents of xenophobia, ill-treatment and violence directed at migrant workers and members of their families.**

Due process, detention and equality before the courts

32. The Committee is concerned about the lack of information regarding due process guarantees for migrant workers and members of their families in criminal and administrative proceedings, including detention and expulsion. It is also concerned that the Immigration (Restriction) Act, which was amended in 2017, criminalizes irregular entry into the State party.

33. **The Committee recommends that the State party:**

(a) **Ensure that in administrative and judicial proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party before the courts and tribunals;**

(b) **Decriminalize irregular entry and ensure that the minimum guarantees enshrined in the Convention are assured with regard to administrative and judicial procedures against migrant workers and members of their families, in line with articles 16 and 17 of the Convention.**

Consular assistance

34. The Committee notes the existence of consular and diplomatic representation in the top three countries of destination for Vincentian migrant workers, including the United States of America, Canada and the United Kingdom of Great Britain and Northern Ireland, but is concerned by the lack of data regarding specific instances when consular assistance has been provided to migrant workers and members of their families to ensure the protection of their rights.

35. **The Committee recommends that the State party take the measures necessary to ensure that its consular services can effectively meet the needs of Vincentian migrant workers in terms of protecting their rights and providing them with assistance, in line with article 23 of the Convention and in the light of article 36 (b) of the Vienna Convention on Consular Relations. Such measures should include the allocation of sufficient human resources and funding and the development of continuing training programmes for consular officials on the Convention and other human rights treaties, as well as the collection of quantitative and qualitative data on the extent to which the rights of Vincentian migrant workers and members of their families are protected or infringed.**

Remuneration and conditions of work

36. The Committee regrets the lack of information on national labour laws and regulations relating to remuneration and conditions of work that apply on an equal basis to migrant workers in both regular and irregular situations. It is concerned about the lack of information on the monitoring and implementation of the principle of equal pay for work of

equal value, specifically with regard to migrant workers, and about the lack of data on actual cases involving non-compliance with the above-mentioned principle.

37. **The Committee recommends that the State party:**

(a) **Collect data on the cases involving non-compliance with the principle of equal pay for work of equal value, including with respect to sanctions imposed on non-compliant employers;**

(b) **Ensure that migrant workers enjoy treatment not less favourable than that which applies to nationals in respect of remuneration, and that this is strictly enforced through regular and unannounced labour inspections in sectors where migrant workers are employed, in line with target 8.8 of the Sustainable Development Goals.**

Education

38. The Committee notes that, under the Education Act (Act No. 34 of 2006), all children between 5 and 16 years of age have access to primary and secondary education, and the majority of children between 3 and 5 years of age have access to early childhood education and care. It also notes that section 27 of the Act prohibits discrimination in admission to an educational institution or school on the basis of, inter alia, place of origin. Nonetheless, the Committee regrets the absence of information concerning the general situation regarding access to education for children of migrant workers in the State party. In particular, the Committee is concerned about reports that children of migrant families are disproportionately affected by the hidden costs of education.

39. **The Committee recommends that the State party, in accordance with article 30 of the Convention, adopt concrete and effective measures and specific programmes to make it possible for children of migrant workers, irrespective of the migration status of their parents, to enter and remain in the education system. It also recommends that the State party provide information in its next periodic report on the general situation regarding access to education for children of migrant workers, irrespective of their migration status.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

Pre-departure and right to be informed

40. The Committee notes the significant number of Vincentian seasonal and temporary workers who travel to Canada and the United States as temporary or seasonal workers. However, the Committee is concerned about the lack of statistical data on pre-departure programmes and the absence of information on how the State party ensures that pre-departure training sufficiently informs migrant workers about their rights under the Convention or about access to justice and available complaint mechanisms.

41. **The Committee recommends that the State party:**

(a) **Develop targeted, gender-responsive pre-departure and awareness-raising programmes, in consultation with, among others, relevant civil society organizations, migrant workers and their families and recognized and reliable recruitment agencies;**

(b) **Establish follow-up programmes for protecting the rights of migrant workers within the framework of overseas bilateral agreements;**

(c) **Take appropriate measures to disseminate information on the rights of domestic migrant workers under the Convention, their conditions of admission and employment and their rights and obligations under the law and practice of States of employment.**

Right to vote and to be elected in the State of origin

42. The Committee is concerned that, under the Representation of the People Act, amended in 2009, Vincentians are not permitted to vote if they have been absent from the State party for a period exceeding five years. It is also concerned about the lack of information on the measures taken to guarantee the right of Vincentian migrant workers living abroad to vote and to be elected to office in the State party.

43. **The Committee recommends that the State party take measures, including those of a legislative nature, to ensure the full enjoyment by, among others, Vincentian migrant workers residing abroad, of the right to vote in the State party in accordance with the Convention, without any limitation related to residency abroad. It also recommends that the State party increase its efforts to facilitate the exercise of the right to vote by Vincentian nationals residing and working abroad in the general elections to be held in 2020.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64–71)

Children in situations of international migration

44. The Committee is concerned about the vulnerability of children left behind in the country of origin to violence, abuse, neglect and exploitation. The Committee regrets the absence of information on the general situation of children of migrant workers in the State party, and on measures taken to facilitate the resettlement and reintegration of Vincentian migrant workers upon their return, including their reunification with children remaining in the State party.

45. **In line with joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration, the Committee recommends that the State party:**

(a) **Conduct a comprehensive study on migrant children, including migrant children in the State party and children of Vincentian migrant workers abroad who have been left behind in the State party, to inform the provision of child protection and social protection services for children affected by migration;**

(b) **Adopt a comprehensive strategy to promote and protect the rights of children and families of Vincentian workers, in particular through educational, entrepreneurial, training and community welfare programmes, and further its cooperation to that effect with civil society actors in situ and in the country of origin;**

(c) **Provide, in its next periodic report, information on the measures taken to facilitate the resettlement and reintegration of Vincentian migrant workers on their return, including reunification with any children who remained behind in the country of origin.**

International cooperation with countries of transit and destination

46. The Committee notes that the Sector Skills Development Agency, as the national agency for technical and vocational education and training, received approval in 2016 to grant the Caribbean Vocational Qualification, allowing Vincentian skilled workers to seek employment opportunities in the region under the free movement of skilled persons programme. However, the Committee is concerned that the bilateral and multilateral agreements that the State party has concluded with countries in the Caribbean Community only promote the free movement of skilled persons, and regrets the lack of information on how the State party ensures that such agreements are in compliance with its obligations under the Convention.

47. **The Committee recommends that the State party take full advantage of bilateral and regional mechanisms in order to advance the rights of Vincentian migrant workers and members of their families under the Convention. It also**

recommends that the State party engage in dialogue within the Caribbean Community aimed at establishing regional initiatives with regard to all migrant workers at all skill levels.

Recruitment agencies

48. The Committee regrets the absence of information on regulatory frameworks for private employment agencies, and is concerned that migrant workers may not be adequately protected from such agencies that act as intermediaries for foreign recruiters who may subject their employees to abusive working conditions.

49. **The Committee recommends that the State party develop a transparent and accountable licensing system for private recruitment agencies that facilitate the employment of migrant workers abroad, ensuring that such agencies are subject to rigorous human rights and labour law due diligence, as well as ongoing regulation and monitoring. It urges the State party to ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular with regard to salaries.**

Return and reintegration

50. The Committee is concerned about the lack of information on the specific measures taken to protect the rights of returning Vincentian migrant workers, many of whom are unskilled workers, and members of their families, and to promote their reintegration. While noting that Vincentian migrant workers were consulted in the formulation of the National Economic and Social Development Plan 2013–2025, the Committee regrets that the Plan does not specifically address the situation of vulnerability in which migrant and members of their families frequently find themselves, including when they return to the country of origin.

51. **The Committee recommends that the State party, in line with article 67 of the Convention and target 10.7 of the Sustainable Development Goals, ensure that the implementation of the National Economic and Social Development Plan 2013–2025 includes programmes to ensure the appropriate social, economic and other conditions necessary to facilitate the return and durable reintegration of Vincentian migrant workers and members of their families, including decent jobs and livelihood opportunities.**

Trafficking in persons

52. The Committee notes with appreciation the adoption of the Prevention of Trafficking in Persons Act, which not only prohibits the trafficking of persons, forced labour and sexual exploitation, but also allows foreign victims to apply for temporary or permanent residence permits and seek compensation from the perpetrators. It also notes the efforts of the State party to combat trafficking in persons by providing assistance to trafficking victims, training government officials and non-governmental organizations, strengthening public-awareness campaigns and conducting a baseline assessment of the extent of human trafficking in the State party, under the national plan of action against trafficking adopted in 2015. However, the Committee is concerned about:

(a) The lack of clarity with regard to the implementation of the national plan of action against trafficking, including the timeline and specific roles of government officials and civil society organizations for implementation;

(b) The lack of reported cases of perpetrators being investigated and prosecuted, and victims receiving compensation from perpetrators;

(c) The lack of specialized services, including access to shelters and legal services, for victims of trafficking;

(d) The lack of information on the measures taken to combat sexual exploitation and forced prostitution.

53. **In line with the Recommended Principles and Guidelines on Human Rights and Human Trafficking published by the Office of the United Nations High Commissioner for Human Rights, the Committee recommends that the State party:**

(a) **Clarify the timeline and the respective roles of the various entities responsible for the implementation of the national plan of action against trafficking;**

(b) **Rigorously investigate and prosecute traffickers, and ensure that victims receive appropriate compensation;**

(c) **Step up campaigns aimed at preventing trafficking in migrant workers and protecting them from forced labour and sexual exploitation, in line with target 5.2 of the Sustainable Development Goals;**

(d) **Improve the training of law enforcement officials, including the coast guard, police, judges, prosecutors, labour inspectors, teachers, health-care providers and diplomatic and consular personnel, to prevent and combat trafficking in persons and to recognize, and provide assistance to, victims;**

(e) **Provide adequate assistance, protection and rehabilitation services to all victims of trafficking, in particular through shelters and projects aimed at their reintegration and repatriation;**

(f) **Strengthen mechanisms for investigating cases of sexual exploitation and forced prostitution, and for prosecuting and punishing offenders;**

(g) **Intensify international, regional and bilateral cooperation to prevent and combat trafficking in persons.**

6. Dissemination and follow-up

Dissemination

54. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official languages of the State party, to the relevant State institutions at all levels, including to government ministries, the legislature, the judiciary, and relevant local authorities, as well as to non-governmental organizations and other members of civil society.**

Technical assistance

55. **The Committee recommends that the State party strengthen its technical cooperation with the international community for the implementation of the recommendations contained in the present concluding observations in line with the 2030 Agenda for Sustainable Development.**

Next periodic report

56. **The Committee requests the State party to submit its combined initial and second periodic report by 1 May 2019 and to include therein information on the implementation of the recommendations contained in the present concluding observations. It also requests the State party to ensure that a delegation is present at the next review of the State party, in order to facilitate a constructive dialogue with the Committee on the implementation of the Convention. In doing so, the State party may wish to follow the simplified reporting procedure in this regard. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (see HRI/GEN/2/Rev.6).**